IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2074 of 2005

Between:

M/s. New Talkie Picture Palace, Rep. by its Managing Partner,
Sowdagar Amanulla Khan, S/o. Ahmad Khan, Aged about 61 Years,
R/o. Old Post Office Road, Ahmed Buildings, Nellore, Nellore District.

..... PETITIONER

AND

1 The Special Officer/District Collector, Nellore Municipal Corporation,
Nellore, Nellore District.
2 The Nellore Municipal Corporation, Rep. by its Commissioner,
Nellore, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the Respondents in interfering with the peaceful possession and demolishing the structures and compound wall belongs to the Petitioner Theatre of
M/s. New Talkie Picture Palalce, Nellore without giving any notice is arbitrary, unreasonable and contrary to the Law laid down by the Larger Bench Reported in 2004 (2) ALD Page No. 451 and consequently direct the respondents not to proceed with the demolition of the structures including Compound wall belongs to the petitioner Theatre without following due process of law.

Counsel for the Petitioner: MR.M.KONDAL RAO

Counsel for the Respondents: MR.S.NAGESWARA REDDY

The Court at the admission stage made the following:

ORDER:

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

The petitioner seeks a Writ of Mandamus declaring the action of the respondents in interfering with its peaceful possession and demolishing the structures and compound wall of the theatre of the petitioner, without giving any notice, as arbitrary and illegal.

It is represented by the learned counsel appearing for both the parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under: -

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."

The learned standing counsel appearing for the respondents does not dispute the above legal position.

The writ petition is accordingly disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No

costs.

_____

(G. ROHINI,J)

Date:09-02-2005.

ghn

To

1 The Special Officer/District Collector, Nellore Municipal Corporation, Nellore, Nellore District.
2 The Nellore Municipal Corporation, Rep. by its Commissioner, Nellore, Nellore District.

3. Two CD copies.

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2074 OF 2005

OPERATIVE PORTION (BY WIRE):

The writ petition is accordingly disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

_____

(G.ROHINI, J)

Date: 09-02-2005

Note:

1. Issue wire at party's costs.
2. Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

ghn